

**IN THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MINNESOTA**

United States of America,

Plaintiff,

v.

**Fifty Below Sales and Marketing,
Inc.,**

Defendant.

Civil No. 0:06-cv-1112-ADM/LIB

**United States' Emergency
Motion for Order Holding Defendant
Fifty Below Sales and Marketing, Inc.
in Civil Contempt of the Court's April 6 Order**

Since August 8, 2012, when the United States moved for the appointment of a receiver based on Defendant Fifty Below Sales & Marketing, Inc.'s violations of this Court's April 6, 2012, order (D.88), Fifty Below has violated this Court's April 6 order in two new ways:

- Fifty Below has failed to make its biweekly employment-tax deposit for that was due on August 15 in respect of the its August 10 payroll distribution;

- Fifty Below has failed to comply with three discovery requests that the United States has propounded.

The second of these violations warrants emergency relief because the company's failure to provide discovery is likely to prejudice the United States in its ability to prosecute the receivership motion, which is set to be heard by this Court on September 5. The United States has noticed the depositions of Fifty Below's two top officers, Michael Rollo and David Hogge, for August 30, and the documents covered by the discovery requests are necessary for the United States to conduct effective examinations.

This Court's April 6 order granted the United States leave to conduct discovery on the subject of contempt and directed the company to "engage in direct correspondence with the investigating IRS agent in this case ... and counsel for the United States" The order also directed the company to "timely make biweekly deposits of its federal employment taxes" and to "file a declaration under oath stating that a deposit has been made... with [the IRS] and to serve a copy on counsel for the Government." As the accompanying declarations of Curtis Weidler and Bart Brellenthin explain, Fifty Below has violated both of those provisions of the April 6 order.

The United States therefore moves for the Court to (a) order the incarceration of Mr. Hogge until such time as Fifty Below purges itself of

the two most recent instances of contempt and (b) as a sanction for its failure to respond to discovery requests propounded by the United States, prohibit Fifty Below from introducing evidence if its inability to comply with the Court's April 6 order at the September 5 hearing on the United States' receivership motion.

Dated: August 23, 2012

Respectfully submitted,
B. TODD JONES
United States Attorney

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